UNITED STATES INTERNATIONAL TRADE COMMISSION

Silicomanganese from Brazil, China, and Ukraine
Investigations Nos. 731-TA-671–673 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION
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SILICOMANGANESE FROM BRAZIL, CHINA, AND UKRAINE

DETERMINATIONS

On the basis of the record[1] developed in the subject five-year reviews, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty orders on silicomanganese from Brazil and China and termination of the suspension agreement on silicomanganese from Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted these reviews on November 2, 1999 (64 F.R. 59209), and determined on February 3, 2000, that it would conduct full reviews (64 F.R. 7891, February 16, 2000). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on August 14, 2000 (64 F.R. 49595). The hearing was held in Washington, DC, on November 14, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Neither former Commissioner Thelma J. Askey nor Commissioner Dennis M. Devaney participated.

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine[1] under section 751(c) of the Tariff Act of 1930, as amended ("the Act"), that revocation of the antidumping duty orders covering silicomanganese from Brazil and China and termination of the suspended antidumping duty investigation covering silicomanganese from Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. BACKGROUND

The original investigations of silicomanganese from Brazil, China, and Ukraine were instituted based on a petition filed by Elkem Metals Co. ("Elkem") on November 12, 1993. Effective October 31, 1994, the Department of Commerce ("Commerce") suspended the antidumping investigation of silicomanganese from Ukraine, based on an agreement by the Government of Ukraine to restrict the volume of direct or indirect silicomanganese exports to the United States and to sell such exports at or above a "reference price" in order to prevent the suppression or undercutting of price levels of U.S. domestic silicomanganese.[2] Petitioner then requested continuation of the investigation regarding silicomanganese from Ukraine. On December 14, 1994, the Commission determined that an industry in the United States was materially injured or threatened with material injury by reason of imports of silicomanganese from Brazil, China, and Ukraine that were being sold at less than fair value ("LTFV").[3] On December 22, 1994, Commerce issued antidumping duty orders on silicomanganese from Brazil and China.[4]

On November 2, 1999, the Commission instituted reviews pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty orders on silicomanganese from Brazil and China and termination of the suspended antidumping duty investigation of silicomanganese from Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.[5]

In five-year reviews, the Commission determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses of interested parties to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by each of two groups of interested parties—domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments)—demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.[6] If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full

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[1] Former Commissioner Thelma J. Askey did not participate in the votes in these reviews. Commissioner Dennis M. Devaney did not participate in these reviews.

[2] 59 Fed. Reg. 60951 (November 29, 1994).

[3] Silicomanganese from Brazil, China, Ukraine, and Venezuela, Inv. Nos. 731-TA-671–674 (Final), USITC Pub. 2836 (December 1994). Hereinafter, we refer to the public version of the Commission's original opinions as "USITC Pub. 2836" and to the confidential version as "Confidential Original Opinion."

[4] 59 Fed. Reg. 66003 (December 22, 1994).

[5] 64 Fed. Reg. 59209 (November 2, 1999).

[6] *See* 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602–05 (June 5, 1998).

review.

In the instant reviews, the Commission received responses to the Notice of Institution from the sole domestic producer of silicomanganese, Eramet Marietta, Inc. ("Eramet"), and the union representing silicomanganese workers in the United States; two Brazilian producers that account for a substantial portion of Brazilian production; Ukrainian producers accounting for all Ukrainian production; the Ukraine Ministry of Industrial Policy; and Ronly Holdings, Ltd., an importer of subject merchandise from Ukraine.

On February 3, 2000, the Commission determined that the domestic interested party group response to its notice of institution was adequate; that the respondent interested party group responses were adequate with respect to silicomanganese from Brazil and Ukraine; but that the respondent interested party group response was inadequate with respect to silicomanganese from China.[7] The Commission then voted unanimously to proceed with full reviews with respect to silicomanganese from all three countries pursuant to section 751(c)(5) of the Act.[8]

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making determinations under section 751(c), the Commission defines "the domestic like product" and the "industry."[9] The Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle."[10]

Commerce has defined the subject merchandise in these reviews as follows:

> sometimes called ferrosilicon manganese, . . . a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous, and sulfur. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. All compositions,

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[7] *See* Explanation of Commission Determination on Adequacy in Silicomanganese from Brazil, China, and Ukraine, Inv. Nos. 731-TA-671–673 (Review); 65 Fed. Reg. 7891 (February 16, 2000).

[8] *Id.* With respect to silicomanganese from China, the Commission determined that conducting a full review would promote administrative efficiency in light of its decision to conduct full reviews with respect to silicomanganese from Brazil and Ukraine.

[9] 19 U.S.C. § 1677(4)(A).

[10] 19 U.S.C. § 1677(10). *See* NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (CIT 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (CIT 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991). *See also* S. Rep. No. 96-249, at 90–91 (1979).

forms and sizes of silicomanganese are included within the scope of this investigation, including silicomanganese slag, fines, and briquettes.[11]

Silicomanganese is used primarily by the steel industry as a source of both silicon and manganese, and sometimes as an alloying agent in iron production. Although manufactured in three grades (A, B, and C) which are distinguished by their silicon and carbon content, most silicomanganese produced and sold in the United States conforms to the specification for grade B. Silicomanganese is generally sold in sized-lump form.[12] Silicomanganese is produced by smelting together in a submerged arc furnace sources of silicon, manganese, iron, and a carbonaceous reducing agent (usually coke).[13]

In the original investigations, the Commission defined the domestic like product as all silicomanganese.[14] In the instant reviews, the sole domestic producer of silicomanganese has urged the Commission to readopt its original like product definition, and the Brazilian and Ukrainian respondents have indicated that they do not object to the original like product definition.[15] We find no information in the record of these reviews to suggest that a different like product definition is appropriate. We therefore define the domestic like product in these reviews as all silicomanganese.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the domestic "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[16] In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.[17] The Commission bases its analysis on a firm's production-related activities in the United States.[18]

In the original investigations, the Commission defined the domestic industry as the sole domestic

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[11] 65 Fed. Reg. 35325 (June 2, 2000).

[12] Confidential Report ("CR") at I-11, Public Report ("PR") at I-9.

[13] CR at I-13, PR at I-10.

[14] USITC Pub. 2836 at I-6–I-7 (Commissioners Rohr and Newquist) and I-21–I-22 (Commissioners Watson, Nuzum, Crawford, and Bragg).

[15] Eramet Prehearing Brief at 4; Brazilian Respondents' Response to Notice of Institution at 4; Ukrainian Respondents' Response to Notice of Institution at 9.

[16] 19 U.S.C. § 1677(4)(A).

[17] *See, e.g.*, Uranium from Kazakhstan, Inv. No. 731-TA-539-A (Final), USITC Pub. 3213 at 8–9 (July 1999); Manganese Sulfate from the People's Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 & n.19 (November 1995) ("the Commission has generally included toll producers that engage in sufficient production-related activity to be part of the domestic industry"). *See, e.g.*, United States Steel Group v. United States, 873 F. Supp. 673, 682–83 (CIT 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

[18] The Commission typically considers six factors: (1) the extent and source of a firm's capital investment; (2) the technical expertise involved in U.S. production activity; (3) the value added to the product in the United States; (4) employment levels; (5) the quantities and types of parts sourced in the United States; and (6) any other costs and activities in the United States leading to production of the like product. *See* Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea, Inv. Nos. 701-TA-387–391 (Final) and 731-TA-816–821 (Final), USITC Pub. 3273 at 8–9 (January 2000).

producer of silicomanganese, petitioner Elkem.[19] In July 1999, the U.S. silicomanganese production assets of Elkem were acquired by Eramet SA of France and the operation was renamed Eramet Marietta Inc. ("Eramet").[20] Consistent with our definition of the like product, we define a single domestic industry consisting of Eramet, the sole domestic producer of silicomanganese.[21]

III. CUMULATION

A. Framework[22]

Section 752(a) of the Act provides that:

> the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.[23]

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The statute precludes cumulation if the Commission finds that subject imports from a country are likely to

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[19] USITC Pub. 2836 at I-7–I-8 (Commissioners Rohr and Newquist) and I-22 (Commissioners Watson, Nuzum, Crawford, and Bragg).

[20] CR at I-14–I-15, PR at I-11.

[21] There are no related parties issues in these reviews. Although Eramet ***, it is not related to any subject producer and has not imported or purchased subject merchandise during the period examined in these reviews. CR at III-1–III-2, PR at III-1.

[22] Commissioner Bragg does not join this section. While she concurs with the majority's findings of reasonable overlap of competition and likely discernible adverse impact in the event the orders are revoked, her cumulation determinations are based upon a different analytical framework than that of her colleagues. *See* Separate Views of Commissioner Lynn M. Bragg regarding Cumulation in Sunset Reviews, found in Potassium Permanganate From China and Spain, Inv. Nos. 731-TA-125–126 (Review), USITC Pub.3245 (October 1999); *see also*, Separate Views of Chairman Lynn M. Bragg Regarding Cumulation, found in Brass Sheet and Strip From Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Inv. Nos. 701-TA-269 & 270 (Review) and 731-TA-311–317 and 379–380 (Review), USITC Pub. 3290 (April 2000). In particular, Commissioner Bragg notes that she examines the likelihood of no discernible adverse impact only after first determining there is likely to be a reasonable overlap of competition in the event of revocation. Having found a reasonable overlap of competition in these reviews for the same reason as those set forth by the Commission majority, Commissioner Bragg turns to the issue of no discernible adverse impact. Based upon the significant excess capacity in each of the subject countries as well as the subject producers' strong export orientation, Commissioner Bragg finds that revocation of the orders and termination of the suspended investigation at issue will lead to a likely discernible adverse impact to the domestic industry. CR and PR at Tables IV-4, IV-6, and IV-7. Commissioner Bragg therefore cumulates subject imports from Brazil, China, and Ukraine.

[23] 19 U.S.C. § 1675a(a)(7).

have no discernible adverse impact on the domestic industry.[24] We note that neither the statute nor the Uruguay Round Agreements Act ("URAA") Statement of Administrative Action ("SAA") provides specific guidance on what factors the Commission is to consider in determining that imports "are likely to have no discernible adverse impact" on the domestic industry.[25] With respect to this provision, the Commission generally considers the likely volume of the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked or the suspended investigation is terminated.[26]

The Commission has generally considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.[27] Only a "reasonable overlap" of competition is required.[28] In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission's traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked or the suspended investigation is terminated. The Commission has considered

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[24] 19 U.S.C. § 1675a(a)(7).

[25] SAA, H.R. Rep. No. 103-316, vol. I (1994).

[26] For a discussion of the analytical framework of Chairman Koplan and Commissioners Miller and Hillman regarding the application of the "no discernible adverse impact" provision, *see* Malleable Cast Iron Pipe Fittings from Brazil, Japan, Korea, Taiwan, and Thailand, Inv. Nos. 731-TA-278–280 (Review) and 731-TA-347–348 (Review) USITC Pub. 3274 (February 2000). For a further discussion of Chairman Koplan's analytical framework, *see* Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Inv. Nos. 303-TA-13 (Review); 701-TA-249 (Review); and 731-TA-262, 263, and 265 (Review) USITC Pub. 3247 (October 1999) (Views of Commissioner Stephen Koplan Regarding Cumulation).

[27] The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market. *See, e.g.*, Wieland Werke, AG v. United States, 718 F. Supp. 50 (CIT 1989).

[28] *See* Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (CIT 1996); Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required."); United States Steel Group v. United States, 873 F. Supp. 673, 685 (CIT 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996). We note, however, that there have been investigations where the Commission has found an insufficient overlap in competition and has declined to cumulate subject imports. *See, e.g.*, Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 (Preliminary) and 731-TA-812–813 (Preliminary), USITC Pub. 3155 at 15 (February 1999), *aff'd sub nom*, Ranchers-Cattleman Action Legal Foundation v. United States, 74 F. Supp.2d 1353 (CIT 1999); Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-761–762 (Final), USITC Pub. 3098 at 13–15 (April 1998).

factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.[29]

B. Analysis

In these reviews, the statutory requirement for cumulation that all reviews be initiated on the same day is satisfied. Although we note that Brazilian respondents urged us to find that imports from Brazil would be likely to have no discernible adverse impact on the domestic industry producing silicomanganese if the relevant antidumping duty order were revoked, we find, for the reasons discussed below in our analysis of the likely volume, price effects, and impact of the subject imports, that the no discernible adverse impact standard is not satisfied with respect to likely subject imports from Brazil, nor with respect to likely subject imports from China or Ukraine.

In the original investigations, three out of six Commissioners found a reasonable overlap of competition. For purposes of their present injury analysis, Commissioners Rohr, Newquist, and Nuzum cumulated imports from all subject countries. Relying on the fact that all silicomanganese serves the same end use regardless of source, they rejected claims that the Brazilian and Ukrainian products were not fungible with the domestic like product. They also rejected the claim that there was no geographic overlap of competition between the domestic like product and imports from Ukraine.[30] By contrast, Commissioners Watson, Crawford, and Bragg cumulated imports from Brazil and China for purposes of their present material injury analysis, but did not cumulate imports from Ukraine. They found no reasonable overlap of competition between imports from Ukraine and the domestic like product based principally on a lack of geographic overlap between sales of the two products. They relied secondarily on the limited substitutability between domestic and Ukrainian silicomanganese, due to the higher phosphorus content of the Ukrainian product.[31] Among the four Commissioners who reached the issue of threat, one cumulated imports from Brazil and China and the others did not cumulate subject imports from any of the four countries.[32]

In the current reviews, the record is clear that all silicomanganese sold in the United States is—and is likely to continue to be—sold through the same channels of distribution, *i.e.*, mostly directly to end users, with very limited sales through distributors, trading companies, and swaps.[33] We therefore consider whether anything has changed since 1994 with respect to either fungibility or geographic overlap, the two issues which divided the Commission in the original investigations.

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[29] *See, e.g.*, Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741–42 (CIT 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (CIT 1988).

[30] USITC Pub. 2836 at I-13–I-14 (Commissioners Rohr and Newquist) and I-73–I-75 (Commissioner Nuzum).

[31] USITC Pub. 2836 at I-30–I-35.

[32] USITC Pub. 2836 at I-53 (Commissioners Watson, Crawford, and Bragg), I-80–I-81 (Commissioner Nuzum), I-69 (Commissioner Crawford).

[33] CR at II-1–II-2, PR at II-1; CR at V-4, PR at V-4.

With respect to fungibility, we note that the method of production for silicomanganese is essentially the same worldwide, and virtually all silicomanganese is used in the production of steel.[34] Although most purchasers reported that they require suppliers to be certified, most also indicated that they do not order based on country of origin; rather, once their chemical requirements are met, products from multiple suppliers are readily substitutable.[35] All parties agree that, when made from Ukrainian manganese ore, Ukrainian silicomanganese typically has a somewhat different chemistry than domestic, Brazilian, or Chinese product, because it contains both more manganese and more phosphorus. The record in these reviews does not support the conclusion, however, that any such differences in chemistry limit purchasers' ability to use Ukrainian, domestic, and other subject silicomanganese interchangeably. While phosphorus is an impurity in many steels, elevated levels of phosphorus are intentionally present in certain re-phosphorized and high-strength–low-alloy steels. Moreover, steel producers whose processes can tolerate the elevated phosphorus level of the Ukrainian product may prefer the Ukrainian product from a cost standpoint, because they obtain more manganese per short ton than they do from other silicomanganese sources.[36] In addition, there is some evidence that the Ukrainian industry can produce silicomanganese with a lower phosphorus content, either by importing higher-quality manganese ore or by double-processing silicomanganese made from Ukrainian ore.[37] We therefore find that subject imports are likely to be fungible with each other and with the domestic like product if the orders are revoked and the suspended investigation is terminated.

As noted above, those Commissioners who did not cumulate silicomanganese from Ukraine in the original investigations relied principally on the limited presence of the domestic like product in ***.[38] The record in these reviews indicates that Ronly Holdings currently imports Ukrainian silicomanganese ***.[39] Eramet reports that several of its ten largest customers ***.[40] If the suspension agreement were terminated, it is likely that Ronly Holdings would not remain the sole importer of the Ukrainian product, since there were several importers of that product in the original investigations.[41] Moreover, the fact that Ukrainian product is currently being sold in Canada[42] suggests that *** is not the only economically and logistically feasible port in North America through which Ukrainian product can be imported, making it likely that, absent the suspension agreement, Ukrainian product could find markets in other parts of the United States.

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[34] CR at I-12–I-14, PR at I-10–I-11.

[35] CR at II-14–II-17, PR at II-8–II-9.

[36] CR at I-14, PR at I-10–I-11; CR at II-17, PR at II-11.

[37] Ukrainian Respondents' Posthearing Brief at 8.

[38] While recognizing that the statute requires consideration of offers to sell as well as actual sales, those Commissioners discounted the presence of a full-time Elkem salesman in Texas, because: (1) the salesman's job was to market Elkem's imports of silicomanganese and its other domestic products as well as domestically-produced silicomanganese; (2) Elkem sold more silicomanganese than it produced, and it would be logical for Elkem to supply customers distant from its Ohio plant with imports or swaps, rather than domestic product; and (3) the record indicated that Elkem only began making serious efforts to expand its sales into that region ***. Confidential Original Opinion, Views of Chairman Watson, Commissioner Crawford, and Commissioner Bragg on Cumulation at 9–10.

[39] Ronly Holdings Importer Questionnaire at 7.

[40] Letter from William Kramer to Donna Koehnke, August 25, 2000, identifying Eramet's ten largest customers.

[41] Original Confidential Report (November 29, 1994) at I-23, I-26.

[42] Ukrainian Respondents' Posthearing Brief at 11–12.

We therefore find that there are likely to be sales of each of the subject imports and the domestic like product in the same geographical markets if the orders are revoked and the suspended investigation is terminated.

Based upon the foregoing, we find that there is likely to be a reasonable overlap of competition among the subject imports from Brazil, China, and Ukraine, and between such imports and the domestic like product if the orders are revoked and the suspended investigation is terminated. We have considered whether other conditions of competition posited by Brazilian and Ukrainian respondents, including differences in regional export markets, third-country trade barriers, and capacity trends, should lead us to decline to exercise our discretion to cumulate in these reviews.[43] We conclude, however, that the asserted differences do not undermine the fact, discussed further below, that producers in all three countries have the same ability and basic economic incentives to seek additional sales in the U.S. market if the orders are revoked and the suspended investigation is terminated. Rather, the existence of such differences is outweighed by considerations supporting cumulation, including the commodity nature of the product, the high degree of substitutability among the subject imports and the domestic like product, and the existence of excess capacity in all the subject countries. We therefore cumulate subject imports from Brazil, China, and Ukraine for purposes of our assessment of the likelihood of continuation or recurrence of material injury in these reviews.

IV. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING DUTY ORDERS ARE REVOKED AND/OR THE SUSPENDED INVESTIGATION IS TERMINATED[44]

A. Legal Standard In A Five-Year Review

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order and terminate a suspended investigation unless: (1) it makes a determination that dumping or subsidization is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order or termination of a suspended investigation "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."[45] The SAA states that "under the likelihood standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo—the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports."[46] Thus, the likelihood standard is prospective in nature.[47] The statute states that "the

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[43] *See* Brazilian Respondents' Prehearing Brief at 33–40; Ukrainian Respondents' Posthearing Brief at 8–10.

[44] Commissioner Bragg joins the remainder of these views.

[45] 19 U.S.C. § 1675a(a).

[46] SAA at 883–84. The SAA states that "[t]he likelihood of injury standard applies regardless of the nature of the Commission's original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed." SAA at 883.

[47] While the SAA states that "a separate determination regarding current material injury is not necessary," it indicates that "the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [*sic*] prices for the domestic like product in the U.S. market in

(continued...)

Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time."[48] According to the SAA, a "'reasonably foreseeable time' will vary from case-to-case, but normally will exceed the 'imminent' time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations]."[49] [50]

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to "consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated."[51] It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, and whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated.[52] [53]

We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination.[54] We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless

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[47] (...continued)
making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked." SAA at 884.

[48] 19 U.S.C. § 1675a(a)(5).

[49] SAA at 887. Among the factors that the Commission should consider in this regard are "the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities." *Id.*

[50] In analyzing what constitutes a reasonably foreseeable time, Chairman Koplan examines all the current and likely conditions of competition in the relevant industry. He defines "reasonably foreseeable time" as the length of time it is likely to take for the market to adjust to a revocation or termination. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define "reasonably foreseeable time" by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

[51] 19 U.S.C. § 1675a(a)(1).

[52] 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission's determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

[53] Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings "the findings of the administrative authority regarding duty absorption." 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings with respect to these reviews.

[54] 19 U.S.C. § 1675(e).

of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors, and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive."[55] No respondent interested parties that produce the subject merchandise in China provided questionnaire responses or participated in these reviews. Accordingly, we have relied on the facts available in these reviews, which consist primarily of the evidence in the record from the Commission's original investigations, the information collected by the Commission since the institution of these reviews, and information submitted by interested parties in these reviews.[56]

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked or the suspended investigation is terminated, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to the production or consumption in the United States.[57] In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.[58]

In evaluating the likely price effects of subject imports if the orders are revoked or the suspended investigation is terminated, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product and whether

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[55] SAA at 869.

[56] Respondent Ronly Holdings, an importer of subject merchandise from Ukraine, has urged the Commission to draw adverse inferences against the domestic industry on the grounds that the domestic industry has impeded the investigation by providing false and misleading information to the Commission. Specifically, Ronly Holdings argues that the facts in these reviews are similar to those in Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela, Inv. Nos. 303-TA-23, 731-TA-566–570, and 731-TA-641 (Reconsideration), USITC Pub. 3218 (August 1999), and that, because Elkem, the original petitioner in the silicomanganese investigations, played a prominent role in the conspiracy to fix ferrosilicon prices, the Commission should take adverse inferences in these reviews rather than giving weight to Elkem's assessment of market conditions in the market for silicomanganese. Ronly Holdings' Posthearing Brief at 4–10. We disagree. The circumstances of these reviews are very different from those in the reconsideration proceedings on ferrosilicon. While Elkem and other producers either pleaded or were found guilty of conspiring to fix prices for ferrosilicon, there has been no investigation, and certainly no conviction, for price fixing in the market for silicomanganese. In the absence of evidence that Elkem provided false or misleading information to the Commission in the original silicomanganese investigations, we decline to draw adverse inferences in these reviews based on Elkem's conduct in the ferrosilicon investigations.

[57] 19 U.S.C. § 1675a(a)(2).

[58] 19 U.S.C. § 1675(a)(2)(A)–(D).

the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.[59]

In evaluating the likely impact of imports of subject merchandise if the orders are revoked or the suspended investigation is terminated, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.[60] All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.[61] As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty orders at issue and whether the industry is vulnerable to material injury if the order is revoked.[62]

For the reasons stated below, we determine that revocation of the antidumping duty orders on silicomanganese from Brazil and China and termination of the suspended antidumping investigation of silicomanganese from Ukraine would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

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[59] 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

[60] 19 U.S.C. § 1675a(a)(4).

[61] 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. In the final results of its expedited reviews regarding subject imports from Brazil and China, Commerce found that revocation of the orders would be likely to lead to continuation or recurrence of dumping at the margins of 64.93 percent for Brazilian producers CPFL and Sibra; 17.60 percent for all other Brazilian producers; and 150.00 for all Chinese exporters. In its final determination in the full review of the suspended antidumping investigation of silicomanganese from Ukraine, Commerce found that termination of the suspended investigation would likely lead to continuation or recurrence of dumping at a margin of 163.00 percent for all exporters. CR at I-8–I-9, PR at I-7.

[62] The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[63]

Domestic demand for silicomanganese is dependent on demand for steel, and, in particular, for steel produced by minimills.[64] Domestic apparent consumption of silicomanganese has increased since the original investigations, ranging between *** and *** short tons during 1991–1993 and between *** and *** short tons during 1997–1999.[65] Although some steel producers can substitute a combination of ferrosilicon and ferromanganese for silicomanganese, such substitution is limited by both technical and cost considerations.[66] Because silicomanganese accounts for a small share of the cost of steel production, demand for silicomanganese is relatively price inelastic.[67]

As discussed above, silicomanganese is a commodity product made to common industry standards. Although silicomanganese can be produced with some variations in chemistry, the silicomanganese consumed in the United States is largely ASTM grade B, and material with a chemistry other than that specified by the ASTM standard is still viewed by the market as silicomanganese.[68] While purchasers reported that price and quality were about equally important to purchasing decisions, they also generally reported that, once the quality of any particular supplier is approved or certified, the product is easily substituted for that of any other certified supplier.[69] Thus, once a producer has qualified multiple suppliers, price takes on central importance to purchasing decisions. Silicomanganese producers and purchasers have access to current price information through the publications *Metals Week* and *Ryan's Notes*, which are used as the basis for both price negotiations and ***.[70]

The domestic industry producing silicomanganese is very small relative to demand and, since the original period of investigation, the domestic industry's market share has remained less than *** percent of the U.S. silicomanganese market. Imports are therefore required to meet demand and the large majority of demand is currently met by nonsubject imports.[71] While the principal sources of nonsubject imports are South Africa, Mexico, and Australia, the U.S. market is currently served by silicomanganese suppliers from at least 20 countries.[72] Given the large number of suppliers, the commodity nature of the product, and the rapid dissemination of pricing information, the U.S. market for silicomanganese is highly price competitive.

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[63] 19 U.S.C. § 1675a(a)(4).

[64] CR at II-10–II-11, PR at II-6–II-7.

[65] CR and PR at Table I-1.

[66] CR at II-11, PR at -7.

[67] CR at II-19, PR at II-12; Eramet Prehearing Brief at 13–14, *citing* Purchasers Questionnaires at Question III-3.

[68] CR at I-11, PR at I-9; Eramet Prehearing Brief at 6–7.

[69] CR at II-15, PR at II-9.

[70] CR at V-4, PR at V-4.

[71] CR and PR at Table I-1.

[72] CR and PR at Table IV-2; Eramet Prehearing Brief at 8–9; Brazilian Respondents' Prehearing Brief at 4–6; Ukrainian Respondents' Prehearing Brief at 3.

Finally, we note that silicomanganese producers are able, at least to a limited extent, to produce other products—particularly ferromanganese—in their silicomanganese furnaces. During the original period of investigation, the petitioner Elkem converted its Marietta silicomanganese furnace to the production of ferromanganese for a number of months and met domestic silicomanganese demand with other sources of supply.[73] While differences in relative prices of silicomanganese and ferromanganese may lead to such conversions, over the long run producers have an incentive to maintain a balance between silicomanganese and ferromanganese production, since slag from the production of ferromanganese is the principal input in silicomanganese and has no other profitable use.[74]

We find that the foregoing conditions of competition are likely to prevail for the reasonably foreseeable future and thus provide an adequate basis by which to assess the likely effects of revocation within the reasonably foreseeable future.

C. Likely Volume of Subject Imports

The Commission's volume analysis in the original investigations focused on the subject imports' ability to increase their U.S. market presence rapidly in terms of both volume and market share.[75] The orders and suspension agreement have clearly had a restraining effect on subject import volumes. The total volume of imports from all countries subject to these reviews was 168,000 short tons in 1993 but only 9,000 short tons in 1999.[76] Since imposition of the orders, there have been virtually no imports from Brazil or China. Ukraine made limited shipments within the suspension agreement quota, which permitted imports of approximately 8,000 metric tons per year, in 1997 and 1999, but none in 1995, 1996, 1998, or interim 2000.[77]

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[73] Confidential Original Opinion, Views of Chairman Watson, Commissioner Crawford, and Commissioner Bragg on No Material Injury By Reason of LTFV Imports from Brazil, China, and Ukraine at 7.

[74] CR at I-13 and n.17, PR at I-10 and n.17; Transcript of Commission Hearing (November 14, 2000) ("Hearing Tr.") at 50, 145–147; Brazilian Respondents' Prehearing Brief at 50–51.

[75] Original Confidential Opinion, Views of Commissioners Rohr and Newquist at 20–21; Views of Chairman Watson, Commissioner Crawford and Commissioner Bragg on Threat of Material Injury at 11–12; Views of Chairman Watson on Threat of Material Injury By Reason of LTFV Imports from Brazil at 3; Additional and Dissenting Views of Vice Chairman Nuzum at 24–27.

[76] CR and PR at Table I-1.

[77] CR and PR at Table D-1. In the original suspension agreement concerning silicomanganese from Ukraine, the Government of Ukraine agreed to restrict the volume of silicomanganese exports to the United States and to sell such exports at or above a "reference price" in order to prevent the suppression or undercutting of price levels for the domestic product. The export limits and reference prices established in the agreement expired on October 31, 2000. In May 2000, Commerce and the Government of Ukraine initialed a new agreement, which included a quota increase from 8,000 metric tons to 20,000 metric tons (Ukraine had requested a quota increase to 50,000 metric tons), but to date the Government of Ukraine has not signed the new agreement. At present, Commerce considers the original agreement to continue in effect. Because there have been no imports of silicomanganese from Ukraine since October 31, 2000, however, Commerce has not found it necessary to rule on the question whether Ukraine is currently entitled to export silicomanganese to the United States free of volume and price restrictions without violating the agreement. CR at I-2–I-3, PR at I-2; Hearing Tr. at 86; Eramet Posthearing Brief, Appendix at 14. On December 5, 2000, Commerce published the preliminary results of an administrative review of the suspension agreement covering the period November 2, 1998, through October 31, 1999, in which it determined that the Government of Ukraine is not in compliance with the agreement because it has failed to

(continued...)

For the reasons discussed below, the information available on the record in these reviews leads us to conclude that subject producers have the capability to increase substantially their cumulated shipments to the United States over current levels if the orders are revoked and the suspended investigation is terminated.

With respect to participating subject producers in Brazil,[78] reported capacity to produce silicomanganese in 1999 was *** short tons, of which *** short tons was excess capacity. In interim 2000, reported silicomanganese production capacity was *** short tons, of which *** short tons was excess capacity.[79] In addition, Brazilian producers reported end-of-period inventories of *** short tons in 1999 and *** short tons in interim 2000. Added together, Brazilian excess capacity and inventories amounted to *** short tons, the equivalent of *** percent of U.S. apparent consumption of silicomanganese in 1999, and *** short tons or the equivalent of *** percent of U.S. apparent consumption of silicomanganese in interim 2000.[80] The record further indicates that the Brazilian silicomanganese industry exports a significant proportion of its production. The industry's exports as a percentage of production ranged from *** to *** during the period examined in these reviews. Indeed, we note that the percentage of production attributable to exports was highest in interim 2000, when ***.[81] Although Brazilian producers contend that their exports are largely directed toward established customers in neighboring Mercosur markets, the record reveals that Brazil's largest export markets in recent years have been Canada and Japan, and, in 2000, the

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[77] (...continued)
comply with the reporting requirements included therein. 65 Fed. Reg. 79922 (December 5, 2000). Commerce will reach a final determination as to whether Ukraine's failure to comply with the reporting requirements rises to the level of a violation of the agreement in April 2001. Based on the foregoing, we discount the Ukrainian respondents' claim that the lack of imports from Ukraine since expiration of the quota in October 1999 is illustrative of what is likely to occur if the suspended investigation is terminated. Ukrainian Respondents' Prehearing Brief at 8. Rather, it appears likely that Ukraine has opted to refrain from exporting silicomanganese pending the results of Commerce's annual review as well as this five-year review.

[78] Although Eramet has identified several other possible Brazilian ferroalloy producers, the limited information available on our record indicates that none of these other companies is currently producing silicomanganese. CR at IV-6–IV-7, PR at IV-5–IV-6; *http://ferbasanet.com.br/prod_6.htm* (printed January 4, 2001). Thus, although we recognize that some of these producers might be technically capable of product-shifting, we have not relied upon that potential ability in making our determinations in these reviews.

[79] CR and PR at Table IV-4. Although the capacity figures reported by the Brazilian industry represent a reduction over the capacity reported in the original investigations, we note that the difference is at least partially accounted for by a change in reporting methodology. In the original investigations, the participating Brazilian producers reported total theoretical capacity that could be used to produce either silicomanganese or ferromanganese. Confidential Original Report (November 29, 1994) at I-67, Table 17. In the current review, by contrast, they reported only capacity allocated to silicomanganese. CR and PR at Table IV-4, fn.1.

[80] CR and PR at Tables I-2 and IV-4. As discussed further below, we find these data for capacity and inventories indicate a likely level of subject imports which, when cumulated with the likely level of imports from China and Ukraine, is sufficient to support our affirmative determinations in these reviews. We note, moreover, that Brazilian producers have conceded that a certain amount of product-shifting between production of silicomanganese and ferromanganese is normal and that, with varying degrees of cost and complexity, shifting from production of other ferroalloys to silicomanganese is also possible. In particular, CVRD, the parent of CPFL and Sibra, has indicated that it could start up 57,000 tons of idle ferroalloy production capacity in the near future if demand warranted. CR and PR at Table IV-4, fn.1; Brazilian Respondents' Posthearing Brief, Responses to Chairman Koplan and Exhibit 1; Hearing Tr. at 42, 120–122.

[81] CR and PR at Table IV-4.

European Union (EU).[82] Given Brazil's significant U.S. market presence during the original investigations, the industry's demonstrated ability to overcome transportation costs and other potential obstacles to sales in major world markets such as Canada, Japan, and the EU, and Brazilian producers' ability to access sufficient capacity to increase their exports to the EU from zero tons to *** tons in six months,[83] we conclude that the Brazilian industry would have the ability and incentive to increase exports to the United States if the relevant order were revoked.

With respect to producers in Ukraine,[84] reported capacity to produce silicomanganese in 1999 was *** short tons, of which *** short tons was excess capacity. In interim 2000, reported capacity was *** short tons, of which *** short tons was excess capacity.[85] In addition, Ukrainian producers reported end-of-period inventories of *** short tons in 1999 and *** short tons in interim 2000. Added together, Ukrainian excess capacity and inventories amounted to *** short tons in 1999, or the equivalent of *** percent of U.S. apparent consumption in 1999, and *** short tons, or the equivalent of *** percent of U.S. apparent consumption in interim 2000.[86] The record further indicates that the Ukrainian industry is export oriented. The industry's exports as a percentage of production ranged from *** percent to *** percent during the period examined in these reviews.[87] Although Ukrainian producers contend that their exports are largely directed toward established customers in eastern Europe and the former Soviet Union, the record reveals that Japan, Mexico, and Canada have also been significant customers in recent years.[88] Finally, we note that the EU currently has a price undertaking in place with respect to imports of silicomanganese from Ukraine. Thus, although Ukrainian producers point out that they are not subject to any antidumping duties or quotas in the EU, the price undertaking does place some limit on their access to the European market.[89] Given Ukraine's significant U.S. market presence during the original investigations, the industry's demonstrated ability to export large quantities to major world markets such as Japan, Mexico, and Canada despite asserted obstacles to exports such as transportation costs and availability of electricity, and existing excess capacity and inventories, we conclude that the Ukrainian industry would have the ability and incentive to increase exports to the United States if the suspended investigation were terminated.

Because no Chinese producers of silicomanganese are participating in these reviews, the record information on the Chinese industry is extremely limited. In the original investigations, the Commission estimated Chinese production capacity at more than *** short tons in 1993.[90] Eramet has submitted information demonstrating that the number of Chinese producers has increased since the original

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[82] CR and PR at Table F-1; Hearing Tr. at 125, 127–130.

[83] Brazilian Respondents' Posthearing Brief at 8.

[84] All known Ukrainian producers participated and provided information in these reviews.

[85] CR and PR at Table IV-7. As in the case of Brazil, we note that these capacity figures represent capacity allocated to the production of silicomanganese and do not reflect additional ferromanganese capacity that could be converted temporarily or permanently to the production of silicomanganese. *** Foreign Producer Questionnaire at 8–10; *** Foreign Producer Questionnaire at 8; Ukrainian Respondents' Posthearing Brief, Exhibit 2 at 3–5.

[86] CR and PR at Tables I-2 and IV-7.

[87] CR and PR at Table IV-7.

[88] CR and PR at Table F-2; Ukrainian Respondents' Posthearing Brief at 11–12.

[89] *** Foreign Producer Questionnaire at 7; Ukrainian Respondents' Posthearing Brief at 10; Eramet Prehearing Brief, Exhibit 17; Council Regulation 495/98, 1998 O.J. (L 062) 1–18.

[90] Confidential Original Report at I-69–I-70 and Table 18.

investigations and that Chinese production is currently rising.[91] According to the China Chamber of Commerce of Metals, Minerals and Chemicals Imports and Exports, China's exports of silicomanganese were 329,110 short tons in 1999 and 186,107 short tons in interim 2000—significantly higher than the total capacity reported to the Commission through the U.S. embassy in Beijing by a few Chinese producers.[92] The Chinese silicomanganese industry is known to be highly export oriented.[93] Since 1998, Chinese exports of silicomanganese have been subject to antidumping duties in the EU and either an antidumping duty order or a suspension agreement in Korea.[94] Available export data indicate that, until those remedies went into effect, Korea and the EU were significant markets for the Chinese product, suggesting that significant volumes of Chinese silicomanganese may have been displaced and would now be available for export to other markets, including the United States.[95]

Overall, we conclude that the likely volume of cumulated subject imports would be significant both in absolute terms and relative to consumption in the United States if the orders are revoked and the suspended investigation is terminated. We base this conclusion on a number of factors, including: the demonstrated ability of producers in all the subject countries to increase their U.S. market penetration rapidly; the existence of very large capacity allocated to the production of silicomanganese, including significant excess capacity and existing inventories, in the subject countries; the existence of additional capacity allocated to production of ferromanganese that could be used to produce silicomanganese; the demonstrated export-orientation of all of the subject industries; the existence of third country antidumping remedies which limit market access for exports from China and Ukraine; the restraining effect that the orders and suspension agreement have had on subject import volumes; and the attractiveness of the large and growing U.S. market as an outlet for excess production.

D. Likely Price Effects of the Subject Imports

In the original investigations, the Commission found that prices for both the domestic product and the subject imports declined over most of the period, while the record revealed a mixed pattern of underselling and overselling by subject imports.[96] As noted above, the U.S. market for silicomanganese remains one in which sales are made principally on the basis of price and in which widely available publications cause any price changes to be rapidly disseminated through the market.[97] Moreover, the U.S. market for silicomanganese is a highly competitive market currently served by producers in at least twenty countries in addition to the domestic industry.[98]

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[91] Eramet Prehearing Brief at 22–23 and Exhibit 22.

[92] CR and PR at Tables IV-5 and IV-6.

[93] Eramet Prehearing Brief at 23.

[94] CR at IV-11, PR at IV-9.

[95] CR and PR at Table F-1.

[96] Confidential Original Opinion, Views of Commissioners Rohr and Newquist at 21; Views of Chairman Watson, Commissioner Crawford, and Commissioner Bragg Concerning No Material Injury By Reason of LTFV Imports from Brazil, China, and Ukraine at 4–7; Additional and Dissenting Views of Vice Chairman Nuzum at 13–14.

[97] CR at II-14–II-16, PR at II-8–II-10; CR at V-4, PR at V-4.

[98] CR and PR at Table IV-2; Eramet Prehearing Brief at 8–9; Brazilian Respondents' Prehearing Brief at 4–6; Ukrainian Respondents' Prehearing Brief at 3.

During the period examined in these reviews, U.S. prices for the domestic like product generally declined in 1998 and the first part of 1999, rose in the second half of 1999 and the first half of 2000, and declined somewhat thereafter.[99] As discussed above, we have found that the volume of cumulated subject imports is likely to increase significantly if the orders are revoked and the suspended investigation is terminated. In light of the already high degree of price-based competition in the U.S. market and the inelasticity of demand for silicomanganese, we conclude that subject imports would be likely to expand their market share by lowering prices. In the short run, such imports would have to undersell the domestic like product and other subject imports to a significant degree in order to gain market share. Because of the rapid way in which price changes are communicated in this market, however, we would not expect any underselling to persist. Rather, we would expect price declines triggered by the likely large volume of subject imports to depress or suppress the overall price level in the United States to a significant degree if the orders were revoked and the suspended investigation was terminated.

E. Likely Impact of the Subject Imports

In the original investigations, the Commission found that, due to falling prices, the domestic industry was unable to operate profitably despite rising apparent consumption, capacity, capacity utilization, production, shipments, and employment.[100] The industry's condition has improved in a few respects since the original investigations. Although production capacity has declined from *** short tons in 1993 to *** short tons in 1999, capacity utilization has risen from *** percent in 1993 to *** percent in 1999, and the domestic industry has increased its market share from *** percent in 1993 to *** percent in 1999.[101] On the other hand, the industry experienced a *** from 1997 to 1998 and a *** in 1999.[102] While rising prices resulted in a positive operating income margin in interim 2000,[103] we noted above that prices have been declining in the second half of 2000.[104] After two years of *** and *** in the most recent year, and with the recent recovery in prices apparently failing to continue, we find the

[99] CR and PR at Tables V-1 and V-2; Eramet Prehearing Brief, Exhibit 7; Brazilian Respondents' Posthearing Brief, Exhibit 3.

[100] Confidential Original Report (November 29, 1994) at Tables 2, 6, 7, 8, 10, and 12.

[101] CR and PR at Table I-1.

[102] CR and PR at Table I-1.

[103] CR and PR at Table III-5.

[104] Eramet Prehearing Brief, Exhibit 7; Brazilian Respondents' Posthearing Brief, Exhibit 3.

domestic industry to be vulnerable to material injury if the orders are revoked and the suspended investigation is terminated.[105] [106]

Given the generally substitutable nature of the subject and domestic products and the inelasticity of demand for silicomanganese, we find that the significant volume of low-priced subject imports, when combined with the expected adverse price effects of those imports, would have a significant adverse impact on the production, shipments, sales, and revenues of the domestic industry. This reduction in the industry's production, sales, and revenues would have a direct adverse impact on the industry's profitability and employment levels, as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, we conclude that, if the antidumping duty orders are revoked and the suspended investigation is terminated, the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty orders on silicomanganese from Brazil and China and termination of the suspended antidumping duty investigation concerning silicomanganese from Ukraine would be likely to lead to continuation or recurrence of material injury to the domestic industry producing silicomanganese within a reasonably foreseeable time.

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[105] In so concluding, we reject the claim by Brazilian and Ukrainian respondents that Eramet's 1999 acquisition of the Marietta facility has significantly strengthened the position of the domestic industry. Brazilian Respondents' Prehearing Brief at 8–12, 65–70; Brazilian Respondents' Posthearing Brief, Answers to Commissioner Hillman; Ukrainian Respondents' Posthearing Brief at 5–6; Ronly Holdings' Posthearing Brief at 1–2. First, we find no legal significance and little practical significance to the fact that the French government indirectly controls a significant share in Eramet's Marietta operation. CR at I-14–I-15, PR at I-11. Although Eramet's parent company provided it with *** after the acquisition, such ***. Moreover, the decline in Eramet's *** in interim 2000, appears to be due to *** rather than to *** as alleged by respondents. Eramet Posthearing Brief, Appendix at 10–11, 17.

[106] Commissioner Bragg finds that the domestic industry is currently not in a weakened condition as contemplated by the vulnerability criterion of the statute. She notes the recent sale of Elkem Metals Company's Marietta facility to Eramet SA, and the corresponding improvement in operating results subsequent to the sale. CR at I-15, PR at I-11; CR and PR at Table III-5.